

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

CASE NO. 00-6027-CR-ZLOCH  
Magistrate Judge Seltzer

UNITED STATES OF AMERICA.

Plaintiff,

v.

JOHNNIE POWELL,

Defendant.

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CLERK U.S. DISTRICT COURT  
S.D. OF FLA.-FRL

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**DEFENDANT'S REPLY TO GOVERNMENT'S OPPOSITION  
TO DEFENDANT'S MOTION TO DISMISS**

COMES NOW the defendant, Johnnie Powell, by and through his undersigned attorney, and files his Reply To the Government's Opposition To Defendant's Motion To Dismiss.

**Motion To Dismiss For Failure To State Essential Elements**

The defendant relies on argument advanced in the motion.

**Motion To Dismiss Count I as Time Barred**

The Government argues essentially that the defendant's filing of a "zero" tax return, almost four years after they claim it was due, extends the six year limitation period announced in 26 U.S.C. § 6531 by an additional six years. This is inaccurate. Under the facts of this case, the offense of tax evasion, if committed at all, would have been completed on April 15, 1993. Under the Government's view that the offense of tax evasion has three elements, *see* Government's Response at 2, the offense as alleged would have been completed upon the defendant willfully taking an

  
40

affirmative act constituting an evasion or attempted evasion of the tax, coupled with the existence of a tax deficiency.

The Government alleges that the defendant willfully filed a false W-4 on June 16, 1992, claiming to be exempt from the withholding of federal income tax for the 1992 tax year. *See Exhibit 1.* Courts have held that willfully filing a false W-4, when coupled with an unpaid tax obligation, can be sufficient to support a conviction for tax evasion. *United States v. King*, 126 F.3d 987, 990 (7th Cir. 1997); *United States v. Connor*, 898 F.2d 942 (3rd Cir. 1990). Under the Government's theory, the defendant incurred a tax obligation on April 15, 1993. Accordingly, assuming only for purposes of this motion that the defendant willfully filed a false W-4 and that he had a tax obligation (which is what the Government contends), the crime of tax evasion was complete on April 15, 1993. Cf. *King*, at 990 ("If the false filing is shown to be willful, the offense is complete with the filing."); *United States v. McGill*, 964 F.2d 222, 230 (3rd Cir. 1992) ("The offense [of tax evasion] is complete when a single willful act of evasion has occurred."). Because, "[s]tatutes of limitations normally begin to run when the crime is complete," see *Pendergast v. United States*, 317 U.S. 412, 418, 63 S.Ct. 268, 271 (1943), the statute of limitations of six years began to run on April 15, 1993. Cf. *United States v. Irvine*, 98 U.S. 450, 452 (1878) ("Whenever the act or series of acts necessary to constitute a [crime] have transpired, the crime is complete, and from that day the Statute of Limitations begins to run against the prosecution."); *United States v. Toussie*, 397 U.S. 112, 115, 90 S.Ct. 858, 860 (1970) (stating that a crime should not be construed as a continuing one "unless the explicit language of the criminal statute compels such a conclusion, or the nature of the crime involved is such that Congress must assuredly have intended that it be treated as a continuing one.").

The Government contends that the defendant's fortuitous filing of a "zero" tax return in February of 1997, after the IRS had audited the defendant and issued a notice of deficiency, gives them an additional six years to file criminal charges. Contrary to the Government's argument, it did not. Tax evasion is not a continuing offense, and the filing of a false tax return is not an act necessary to the commission of the crime. *United States v. Kirkman*, 755 F.Supp. 304, 306 (D. Idaho 1991). The crime arguably was completed, if at all, upon the defendant incurring a tax liability after willfully filing an allegedly false W-4. This occurred on April 15, 1993. The Government had six years to file its charges. As it failed to do so within those six years, count I alleging tax evasion for the tax year 1992 is barred by the limitation period and should be dismissed.

The Government cites *United States v. Hunerlach*, 197 F.3d 1059, 1065 (11th Cir. 1999), in opposition to the motion. However, the *Hunerlach* case is distinguishable from this case. Unlike the present scenario, *Hunerlach* involved the evasion of payment of tax. In fact, unlike this defendant, Hunerlach agreed to a tax liability and then undertook substantial evasive action to conceal his assets in an effort to avoid payment. In contrast, in light of all the facts and the attachment to the "zero" return, it is questionable whether the filing of the "zero" return relied upon by the Government to extend the limitation period even constitutes "an affirmative act of evasion."

*See* Defendant's Exhibit 2.

Under the Government's theory, the limitation period would not have been running until February of 1997. Nothing in the statute supports such an analysis. Clearly, the statute of limitations began running on April 15, 1993. Equally as clear is that the Government knew this. This was not a case where the defendant's evasive actions prevented the Government from discovering the acts or omissions that they now claim constitute a crime, possibly justifying an

extension of the statute of limitations. Instead, the IRS was actively investigating this defendant and his tax obligation for 1992 years prior to the filing of a zero tax return in 1997. See Defendant's Exhibit 3 (Letter from IRS to the defendant regarding alleged tax deficiency for 1992 and dated October 25, 1995); Defendant's Exhibit 4 (Audit materials from IRS reflecting selection by examination on February 15, 1995, characterizing the defendant as an "illegal tax protestor," and identifying his "scheme" as "non-filer"); Defendant's Exhibit 5 (Notice of Deficiency Dated April 5, 1996).

The Supreme Court has stated that the "purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions." *Toussie v. United States*, 397 U.S. 112, 114, 90 S.Ct. 858, 860 (1970). This limitation is designed to protect individuals from having to defend themselves against allegations from the distant past. *Id.* Moreover, the existence of limitation periods is designed to encourage law enforcement officials to investigate promptly suspected criminal activity. *Id.* at 115. Because of these important concerns, criminal limitation statutes are to be liberally interpreted in favor of repose. *Id.*

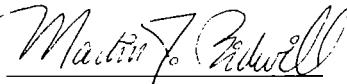
Notwithstanding their being well aware of the facts which they now offer to support the charge in count I, the Government sat on its hands and failed to obtain an indictment within six years from the date the alleged crime was completed. They now are attempting to overcome this problem by bootstrapping the filing of a "zero" tax return into a fresh six years under the limitation statute. As a practical matter, their reasoning would extend the statute of limitations to almost ten years. Nothing in either § 7201 or § 6531 supports such a conclusion. Under these facts, the limitation period has expired and count I should be dismissed.

WHEREFORE the defendant prays that the Court grant this motion and dismiss count I of the indictment as time barred pursuant to 26 U.S.C. § 6531.

Respectfully submitted,

KATHLEEN M. WILLIAMS  
FEDERAL PUBLIC DEFENDER

By:

  
Martin J. Bidwill  
Assistant Federal Public Defender  
Attorney for Defendant  
Florida Bar No. 868795  
101 N.E. 3rd Avenue, Suite 202  
Fort Lauderdale, Florida 33301  
(954) 356-7436 / 356-7556 (Fax)

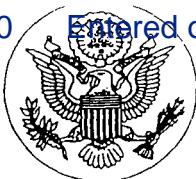
CERTIFICATE OF SERVICE

I certify that a true and correct copy of the aforementioned motion was mailed on this 10<sup>th</sup> day of May, 2000, to Robin Rosenbaum, Assistant United States Attorney, 500 East Broward Boulevard, Suite 700, Fort Lauderdale, Florida 33394.

  
Martin J. Bidwill

<b>W-4</b> From Department of the Treasury Internal Revenue Service	
Employee's Withholding Allowance Certificate	
OMB No. 1545-0010	
► For Privacy Act and Paperwork Reduction Act Notice, see reverse.	
1 Type or print your first name and middle initial <i>Johney</i> <input type="checkbox"/> <i>Brye</i>	
2 Your social security number <i>262-57-9754</i>	
3 <input checked="" type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Married, but withheld at higher Single rate. <small>Note: If married, but legally separated, or spouse is a nonresident alien, check the Single box.</small>	
4 If your last name differs from that on your social security card, <small>check here and call 1-800-772-1213 for more information</small>	
5 Total number of allowances you are claiming (from line G above or from the Worksheets on back if they apply) <i>1</i>	
6 Additional amount, if any, you want deducted from each paycheck <small>(Enter amount in dollars and cents.)</small>	
7 I claim exemption from withholding and I certify that I <b>meet ALL</b> of the following conditions for exemption: <ul style="list-style-type: none"> <li>• Last year I had a right to a refund of <b>ALL</b> Federal income tax withheld because I had <b>NO</b> tax liability; <b>AND</b></li> <li>• This year I expect a refund of <b>ALL</b> Federal income tax withheld because I expect to have <b>NO</b> tax liability; <b>AND</b></li> <li>• This year if my income exceeds \$600 and includes nonwage income, another person cannot claim me as a dependent.</li> </ul>	
8 If you meet all of the above conditions, enter the year effective and "EXEMPT" here <small>Under penalties of perjury, certify that you are entitled to the number of withholding allowances claimed on this certificate or entitled to claim exempt status.</small>	
Employee's signature ► <i>Johney Brye</i>	
Date ► <i>June 1st</i> 19 <i>92</i>	
9 Employer's name and address (Employer: Complete g and 11 only if sending to the IRS) <small>Call No. 102200</small>	
10 Office code <small>(optional)</small>	
11 Employer identification number <i>44-1992</i>	

United States



of America

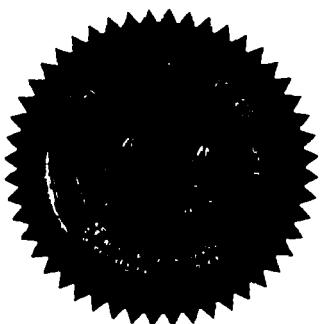
Department of the Treasury  
Internal Revenue Service

Date: January 7, 1999

CERTIFICATE OF OFFICIAL RECORD

I certify that the annexed: is a true copy of Form 1040, U. S. Individual Income Tax Return and return information for the tax year 1992, for Johnny L. Powell, SSN 262-57-8754, c/o 109 S. W. 7<sup>th</sup> Street, Hallandale, FL 33009, consisting of twenty-eight (28) pages \_\_\_\_\_

under the custody of this office.



IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of this office to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

*Melanie Romano*

*for*  
Terry Davis  
Disclosure Officer

1040

## U.S. Individual Income Tax Return in 1992

IRS Use Only—Do not write or staple in this space

**Label**

(See instructions on page 10.)

Use the IRS label.

Otherwise, please print or type.

Presidential

Election Campaign  
(See page 10.)

For the year Jan. 1-Dec. 31, 1992, or other tax year beginning

1992, ending

19

OMB No. 1545-0074

Your first name and initial

Last name

L  
A  
B  
E  
LH  
E  
R  
E

Johnnie Leonard

Powell

If a joint return, spouse's first name and initial

Last name

Your social security number

262-57-8754

Spouse's social security number

Home address (number and street). If you have a P.O. box, see page 19

Apt. no.

10109 Southwest Seven A Street

City, town or post office, state, and zip code. If you have a foreign address, see page 10.

Hollywood, Florida 33009

Do you want \$1 to go to this fund?

Yes



No

Note: Checking "Yes" will not change your tax or reduce your refund.

If a joint return, does your spouse want \$1 to go to this fund?

Yes



No

Note: Checking "Yes" will not change your tax or reduce your refund.

**Filing Status**

(See page 10.)

1

Single

2

Married filing joint return (even if only one had income)

3

Married filing separate return. Enter spouse's social security no. above and full name here. ►

4

Head of household (with qualifying person). (See page 11.) If the qualifying person is a child but not your dependent, enter this child's name here. ►

5

Qualifying widow(er) with dependent child (your spouse died ► 19 ). (See page 11.)

**Exemptions**

(See page 11.)

6a

□ Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a. But be sure to check the box on line 33b on page 2

b

□ Spouse

c

Dependents:

(1) Name (first, initial, and last name)

(2) Check

(1) If under age 1  
if under age 1

(3) If age 1 or older..

dependent's social security number

(4) Dependent's

relationship to you

(5) No. of months

lived in your home in 1992

No. of boxes checked on 6a and 6b

No. of your children on 6c wife:

- lived with you
- didn't live with you due to divorce or separation (see page 13)

No. of other dependents on 6c

Add numbers entered on lines above ►

II more than six dependents, see page 12.

d

If your child didn't live with you but is claimed as your dependent under a pre-1985 agreement, check here ►

e

Total number of exemptions claimed

7 91 0 00

8a

9 0 00

10

11 91 0 00

12

13

14

15

16b

17b

18

19

20

21b

22

23 91 0 00

If you did not get a W-2, see page 9.

Attach check or money order on top of any Forms W-2, W-2G, or 1099-R.

7

Wages, salaries, tips, etc. Attach Form(s) W-2

8a

Taxable interest income. Attach Schedule B if over \$400

b

Tax-exempt interest income (see page 15). DON'T include on line 8a

8b

9

Dividend income. Attach Schedule B if over \$400

10

Taxable refunds, credits, or offsets of state and local income taxes from worksheet on page 16

11

Alimony received

12

Business income or (loss). Attach Schedule C or C-EZ

13

Capital gain or (loss). Attach Schedule D

14

Capital gain distributions not reported on line 13 (see page 15)

15

Other gains or (losses). Attach Form 4797

16a

Total IRA distributions

16a

b Taxable amount (see page 16)

17a

Total pensions and annuities

17a

b Taxable amount (see page 16)

18

Rents, royalties, partnerships, estates, trusts, etc. Attach Schedule E

19

Farm income or (loss). Attach Schedule F

20

Unemployment compensation (see page 17)

21a

Social security benefits

21a

b Taxable amount (see page 17)

22

Other income. List type and amount—see page 18

23

Add the amounts in the far right column for lines 7 through 22. This is your total income ►

**Adjustments to Income**

(See page 18.)

24a

Your IRA deduction from applicable worksheet on page 19 or 20

24a

b

Spouse's IRA deduction from applicable worksheet on page 19 or 20

24b

25

One-half of self-employment tax (see page 20)

25

26

Self-employed health insurance deduction (see page 20)

26

27

Keogh retirement plan and self-employed SEP deduction

27

28

Penalty on early withdrawal of savings

28

29

Alimony paid. Recipient's SSN ►

29

30

Add lines 24a through 29. These are your total adjustments ►

30

**Adjusted Gross Income**

31

Subtract line 30 from line 23. This is your adjusted gross income. If this amount is less than \$22,370 and a child lived with you, see page EIC-1 to find out if you can claim the "Earned Income Credit" on line 56

31

\$ 0 0 00

Form 1040 (1992)

0105

1040

Cat. No. 11320B

**Tax Computation**  
 (See page 22.)

33a Check if:  You were 65 or older.  Blind;  Spouse was 65 or older.  Blind.  
 Add the number of boxes checked above and enter the total here ► 33a  
 b If your parent (or someone else) can claim you as a dependent, check here ► 33b   
 c If you are married filing separately and your spouse itemizes deductions or you are a dual-status alien, see page 22 and check here ► 33c

34 Enter the larger of your: Itemized deductions from Schedule A, line 26, OR Standard deduction shown below for your filing status. But if you checked any box on line 33a or b, go to page 22 to find your standard deduction. If you checked box 33c, your standard deduction is zero.

- Single—\$3,600 • Head of household—\$5,250
- Married filing jointly or Qualifying widow(er)—\$6,000
- Married filing separately—\$3,000

35 Subtract line 34 from line 32

36 If line 32 is \$78,950 or less, multiply \$2,300 by the total number of exemptions claimed on line 6e. If line 32 is over \$78,950, see the worksheet on page 23 for the amount to enter.

37 Taxable Income. Subtract line 36 from line 35. If line 36 is more than line 35, enter -0.

38 Enter tax. Check if from a  Tax Table, b  Tax Rate Schedules, c  Schedule D, or d  Form 8815 (see page 23). Amount, if any, from Form(s) 8814 ► e

39 Additional taxes (see page 23). Check if from a  Form 4970 b  Form 4972

40 Add lines 38 and 39 ►

If you want the IRS to figure your tax, see page 23.

**Credits**

(See page 23.)

41 Credit for child and dependent care expenses. Attach Form 2441

42 Credit for the elderly or the disabled. Attach Schedule R

43 Foreign tax credit. Attach Form 1116

44 Other credits (see page 24). Check if from a  Form 3800 b  Form B3956 c  Form 6801 d  Form (specify) ►

45 Add lines 41 through 44

46 Subtract line 45 from line 40. If line 45 is more than line 40, enter -0 ►

**Other Taxes**

47 Self-employment tax. Attach Schedule SE. Also, see line 25.

48 Alternative minimum tax. Attach Form 6251

49 Recapture taxes (see page 25). Check if from a  Form 4255 b  Form 8611 c  Form 8828

50 Social security and Medicare tax on tip income not reported to employer. Attach Form 4137

51 Tax on qualified retirement plans, including IRAs. Attach Form 5329

52 Advance earned income credit payments from Form W-2

53 Add lines 46 through 52. This is your total tax. ►

**Payments**

Attach Forms W-2, W-2G, and 1099-R on the front.

54 Federal income tax withheld. If any is from Form(s) 1099, check ►  800 00

55 1992 estimated tax payments and amount applied from 1991 return.

56 Earned Income credit. Attach Schedule EIC

57 Amount paid with Form 4868 (extension request)

58 Excess social security, Medicare, and RRTA tax withheld (see page 26)

59 Other payments (see page 26). Check if from a  Form 2439 b  Form 4136

60 Add lines 54 through 59. These are your total payments ► 80 00

**Refund or Amount You Owe**

Attach check or money order on top of Form(s) W-2, etc., on the front.

61 If line 60 is more than line 53, subtract line 53 from line 60. This is the amount you OVERPAID. ► 61

62 Amount of line 61 you want REFUNDED TO YOU. ► 62

63 Amount of line 61 you want APPLIED TO YOUR 1993 ESTIMATED TAX ► 63

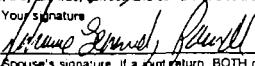
64 If line 53 is more than line 60, subtract line 60 from line 53. This is the AMOUNT YOU OWE. Attach check or money order for full amount payable to "Internal Revenue Service." Write your name, address, social security number, daytime phone number, and "1992 Form 1040" on it.

65 Estimated tax penalty (see page 27). Also include on line 64 ► 65 80 00

**Sign Here**

Keep a copy of this return for your records.

Under penalties of perjury, I declare that I have identified this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information or which preparer has any knowledge

Your signature   
 Spouse's signature. If a joint return, BOTH must sign.

Date: 2/11/97 Your occupation Fire Fighter  
 Date Spouse's occupation

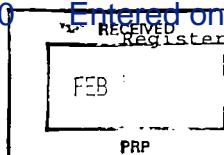
**Paid Preparer's Use Only**

Paid Preparer's signature	Date	Check if self-employed <input type="checkbox"/>	Preparer's social security no.
Firm's name (or yours if self-employed) and address		E.I. No.	
		ZIP code	

7 0 9 4

0106

Katy J. Brown  
Department of the Treasury  
Internal Revenue Service  
Atlanta, Georgia 39901



R 233 546 610

I am submitting this statement as part of my 1992 income tax return.

Even though I know that no section of the Internal Revenue Code:

1. established an income tax "liability," as, for example, Code Sections 4401, 5005, and 5703 do with respect to wagering, alcohol, and tobacco taxes;

2. provides that income taxes "have to be paid on the basis of a return" - as, for example, Code Sections 4374, 4401(c), 5061(a) and 5703(b) provide with respect to other taxes

I am filing anyway, because I know that the government has prosecuted others for failing to file income tax returns by (erroneously) invoking Code Sections 7201 and 7203. Therefore, this return is not being filed voluntarily, but is being filed out of fear that if I did not file this return, I could also be (illegally) prosecuted for failing to file an income tax return for the year '992!

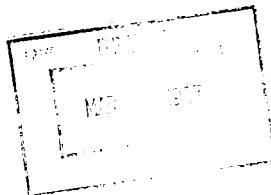
In addition to the above, I am filing even though:

3. The "Privacy Act Notice" on the face of this return directs me to, states that I need only file a return for "any tax" I may be "liable" for, and since no Code section makes me "liable" for income taxes, this Notice notifies me that I do not have to file an income tax return.

4. 26 CFR 602.101 does not list a 1040 (OMB #1545-0074) as even being applicable to the income tax imposed in Section 1 of the Code. This regulation refers the public to a return with the OMB number 1545-0067, which I discover is for reporting "Foreign Earned Income." Since I have no foreign earned income to report, there seems to be no other document or return that 26 CFR 602.101 makes applicable to the income tax imposed in Section 1 of the Internal Revenue Code.

- 5. Sections 6103(h) & (i) provide that all return information can be used against me to determine and impose both criminal and civil fines and penalties.

Therefore, I do not see how any law can compel me to provide information to the government that can be used against me in this manner, consistent with my Fifth Amendment right not to be compelled to be a witness against myself. (Fifth Amendment protection applies to any proceeding; civil or criminal,



administrative or judicial and may be invoked in connection with federal income taxes. See U.S. v. Argomaniz, 925 F.2d 1349 (11th Cir. 1991); Cincinnati v. Bawtenheimer, 63 Ohio St.3d, page 260)

With respect to the information I included in my return, I wish to point out that the courts have ruled that "A (1040) form with 'zeros' inserted in the space provided... qualified as a return." See U.S. v. Long, 618 F.2d 74 (9th Cir. 1980); U.S. v. Kimball, 896 F.2d 1218 (9th Cir. 1990); U.S. v. Moore, 627 F.2d 830 (7th Cir. 1980)

It should also be noted that I had "zero" income according to the Supreme Court's definition of income (See Note #1), since in Merchant's Loan & Trust Co. v. Smietanka, 255 U.S. 509, (at pages 518 & 519) that Court held that "The word (income) must be given the same meaning in all of the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act (of 1909)." Therefore, since I had no Earnings in '1992' that would have been taxable under the Corporation Excise Tax Act of 1909 as "income," I can only swear to having "zero" income in '1992'. Obviously, since I know the legal definition of "income," if I were to swear to having received any other amount of "income," I would be swearing falsely, and thus would be committing a crime under both 18 U.S.C. 1621 and 26 U.S.C. 7206. So, not wishing to violate either statute, I can only swear to having "zero" income for '1992'.

Note# 1. The word "income" is not defined in the Internal Revenue Code. U.S. v. Ballard, 535 F.2d 400, 404, but, as stated above, it can only be a derivative of corporate activity. The Supreme Court has held this numerous times. "Whatever difficulty there may be about a precise and scientific definition of 'income' it imports, as used here... the idea of gain or increase arising from corporate activities," Doyle v. Mitchell, 247 U.S. 179. "Certainly the term 'income' has no broader meaning in the 1913 Act than in that of 1909 (See Stratton's Independence v. Howbert, 231 U.S. 399, 416, 417), and ... we assume that there is no difference in its meaning as used in the two acts."

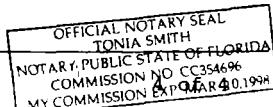
Southern Pacific Co. v. John Z. Lowe, Jr., 247 U.S. 330, 335.

Sincerely, Johnnie Leonard Powell  
Johnnie Leonard Powell

Subscribed and sworn before me this 31 January, 1997.

Tonia Smith  
NOTARY PUBLIC, State of Florida

My Commission expires:



Department of the Treasury

(ECC 54)

Date 10-25-95

Taxpayer Identification Number:

262-57-8754

Tax Year Ended:

1992

Person to Contact:

N. Brewster

Contact Telephone Number:

(This is not a toll-free number)

(404) 728-1270

9212 065156620  
JOHNNY L POWELL 9514

1021 NE 142ND ST  
N MIAMI FL 33161-3315211

Dear Taxpayer

We considered the information you sent us on 8-25-95, concerning your 1993 federal income tax liability. We've enclosed two copies of a report explaining our proposed changes. Please carefully read the report and our explanations.

If you agree with the proposed changes, please sign, date, and return one copy of the report with the total payment of \$2,828 by 11-25-95 (15 days from the date of this letter). If you can't pay the full amount at this time, please call us to discuss how you can pay what you owe.

If you don't agree with the proposed changes, please explain why you disagree on one copy of the report and return it to us by 11-25-95 (15 days from the date of this letter). Be sure to include copies of records that support your reasons for disagreeing.

Please respond within 15 days. Otherwise, we will send a formal Notice of Deficiency by registered mail. Once we send a Notice of Deficiency, you may no longer appeal within the IRS system, and if you then choose to disagree with our findings, you must file a petition in the Tax Court.

Please carefully read the publications we've enclosed. Publication 1 explains your rights as a taxpayer and Publication 1383 explains the correspondence examination process.

If you have any questions about this letter, please write or call the tax examiner whose name and telephone number appear in the top right corner of this letter. There will be a long distance charge for calls when the service center is outside your local calling area. Our tax examiner can call you if you give us your telephone number and best time to reach you. Please include your area code.

Telephone: \_\_\_\_\_ Best time to call: \_\_\_\_\_

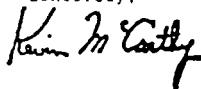
0734

(over)

Please attach this letter to any correspondence you send to help us identify your  
... Make and keep an extra copy for your own records. We've enclosed an addressed  
velope for your convenience.

Thank you for your cooperation.

Sincerely,



Chief, Service Center  
Examination Branch

Enclosures:

Copy of this letter

Envelope

Examination report (two copies)

Publications: Pub. 1 and Pub. 1383

**PRIVACY ACT STATEMENT**

The Privacy Act of 1974 says that when we ask you for tax return information, we must first tell you: (1) our legal right to ask for it, (2) why we ask for it and why we need it, and (3) what could happen if you do not give us the information.

Our legal right to ask for tax return information is Internal Revenue Code sections 6001, 6011, 6012(a) and their regulations. They say that you must file a return or statement with us for any federal tax liability.

We ask for tax return information to carry out the U.S. tax laws. We need it to figure and collect the right amount of tax. We may give the information to the Department of Justice and other federal agencies, as provided by law. We may also give it to states, cities, the District of Columbia, and U.S. commonwealths or possessions to carry out their tax laws.

If you do not give us the information we ask for, or if you provide fraudulent information, the law says that we may have to charge you penalties, and in certain cases, subject you to criminal prosecution. We may also have to disallow the exemptions, exclusions, credits, deductions or adjustments shown on your tax return. This could make your tax higher or delay any refund. We may also have to charge interest.

0735

**1040**Department of the Treasury—Internal Revenue Service  
**U.S. Individual Income Tax Return for 1992**

1992

FD-1040 Only—Do not write or stamp in this space

For the year Jan. 1-Dec. 31, 1992, or other tax year beginning

1992, ending

19 CMR No. 1545-0074

**Label**

(See instructions on page 10.)

Use the IRS label.  
Otherwise, please print or type.**Presidential**Electoral Campaign  
(See page 10.)**Filing Status**

(See page 10.)

Check only one box.

**Exemptions**

(See page 11.)

If more than six dependents, see page 12.

**Income**

Attach Copy B of your Forms W-2, W-20, and 1099-R here.

If you did not get a W-2, see page 9.

Attach check or money order on top of any Form W-2, W-20, or 1099-R.

**Adjustments to Income**

(See page 18.)

Your first name and initial		Last name		Your social security number	
Johnny L		Dowell		262-57-8754	
(If joint return, spouse's first name and initial)		Last name		Spouse's social security number	
Home address (number and street. If you have a P.O. box, see page 10.)				Apartment no.	
1021 NE 142 St					
City, town or post office, state, and ZIP code. If you have a foreign address, see page 10.					
Miami, FL 33161					

**For Privacy Act and Paperwork Reduction Act Notice, see page 4.**

Do you want \$1 to go to this fund?  Yes  No  Note: Checking "Yes" will not change your tax or reduce your refund.

If a joint return, does your spouse want \$1 to go to this fund?  Yes  No

1 Single

2 Married filing joint return (even if only one had income)

3 Married filing separate return. Enter spouse's social security no. above and list names here. ►

4 Head of household (with qualifying person). (See page 11.) If the qualifying person is a child but not your dependent, enter this child's name here. ►

5 Qualifying widow(er) with dependent child (your spouse died ► 19 ). (See page 11.)

6a  Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a. But be sure to check the box on line 33b on page 2.

No. of hours checked on 6a and 6b

b  Spouse

No. of your children on the title

c Dependents:

(1) Name (first, initial, and last name)

(2) Check if under age 1

(3) If age 1 or older, dependent's social security number

(4) Dependent's relationship to you

(5) If 6 months lived in your home in 1992

No. of hours checked on 6a and 6b

No. of your children on the title

e Street where you didn't live with your dependent during or after divorce or separation (see page 13)

f No. of other dependents on 6a

Add numbers entered on lines above ►

d If your child didn't live with you but is claimed as your dependent under a pre-1985 agreement, check here ►

e Total number of exemptions claimed

7	Wages, salaries, tips, etc. Attach Form(s) W-2	7
8a	Taxable interest income. Attach Schedule B if over \$400	8a
b	Tax-exempt interest income (see page 15). DON'T include on line 8a	b
9	Dividend income. Attach Schedule B if over \$400	9
10	Taxable refunds, credits, or offsets of state and local income taxes from worksheet on page 16	10
11	Alimony received	11
12	Business income or (loss). Attach Schedule C or C-EZ	12
13	Capital gain or (loss). Attach Schedule D	13
14	Capital gain distributions not reported on line 13 (see page 15)	14
15	Other gains or (losses). Attach Form 4797	15
16a	Total IRA distributions	16a
17a	Total pensions and annuities	17a
b	Taxable amount (see page 16)	b
18	Rents, royalties, partnerships, estates, trusts, etc. Attach Schedule E	18
19	Farm income or (loss). Attach Schedule F	19
20	Unemployment compensation (see page 17)	20
21a	Social security benefits	21a
22	Other income. List type and amount—see page 18	22
23	Add the amounts in the far right column for lines 7 through 22. This is your total income ►	23

24a	Your IRA deduction from applicable worksheet on page 19 or 20	24a
b	Spouse's IRA deduction from applicable worksheet on page 19 or 20	b
25	One-half of self-employment tax (see page 20)	25
26	Self-employed health insurance deduction (see page 20)	26
27	Keogh retirement plan and self-employed SEP deduction	27
28	Penalty on early withdrawal of savings	28
29	Alimony paid. Recipient's SSN ►	29
30	Add lines 24a through 29. These are your total adjustments ►	30

0653

PROTEST TAX RETURNS  
CLASSIFICATION CHECK SHEET

Form No. 1040 1120 1041 1065  
      
AUTOMATIC

PART I - CLASSIFICATION (To be checked by Classifier or Group Manager)

INSTRUCTIONS: Classifier will check those items which in his opinion require adjustment or explanation. Group Manager will check other items which appear to require adjustment or explanation.

CE

YR 92-2

Illegal Tax Protester  
Scheme Non-Filer  
Source Code 24  
Organization Code 5002-2500  
Project Code 165

ITEM

REASONS FOR  
SELECTION  
BY CLSFR.  
BY GP.  
MGR.

REMARKS

Taxpayer is a protester.  
Since 1983 and a  
nonfiler since 1982

SELECTED

FEB 16 1995

EXAM. DIV.  
SC07 NO. 56

CONT.  TAXES  LOSSES  MISC.  
 INT.  MED.  CHILD CARE

Frivolous Return Penalty  
Has been assessed  
Should be considered during examination  
Is not applicable

PART II - ASSIGNMENT AND CARDING INSTRUCTIONS

BRANCH	POST OF DUTY	GROUP	
<input type="checkbox"/> Field Exam.			
<input type="checkbox"/> Office Exam.			
CLASSIFIER'S INITIALS 500-1-246 (7-93)	A/1 DATE 7-93	EXAMINER'S INITIALS	DATE

Department of the Treasury  
IRS - Southeast Region

0654

Department of the Treasury  
Internal Revenue Service  
P.O. BOX 4200  
DURAVILLE, GA 30340  
262-57-8754

162094

CERTIFIED MAIL

04/05/1996

Date:

Tax Year Ended and Deficiency:  
December 31, 1992.

Person to Contact:

Contact Telephone Number:

7:30 A.M. TO 4:00 P.M.  
(NOT A TOLL FREE NUMBER)

JOHNNY L. POWELL

109 S.W. 7TH STREET  
HALLANDALE FL 33009DEFICIENCY: \$3799.00  
PENALTY CODE SECTION

6651(a) I.R.C. :	\$450.00
6653(a) I.R.C. :	
6654(a) I.R.C. :	\$69.00
6661(a) I.R.C. :	
6653(g) I.R.C. :	
6662(A) I.R.C. :	

Dear Taxpayer:

We have determined that there is a deficiency (increase) in your income tax as shown above. This letter is a NOTICE OF DEFICIENCY sent to you as required by law. The enclosed statement shows how we figured the deficiency.

If you want to contest this deficiency in court before making any payment, you have 90 days from the above mailing date of this letter (150 days if addressed to you outside of the United States) to file a petition with the United States Tax Court for a redetermination of the deficiency. The petition should be filed with the United States Tax Court, 400 Second Street NW, Washington, D.C. 20217, and the copy of this letter should be attached to the petition. The time in which you must file a petition with the Court (90 or 150 days as the case may be) is fixed by law and the Court cannot consider your case if your petition is filed late. If this letter is addressed to both a husband and wife, and both want to petition the Tax Court, both must sign the petition or each must file a separate, signed petition.

If you dispute not more than \$10,000 for any one tax year, a simplified procedure is provided by the Tax Court for small tax cases. You can obtain information about this procedure, as well as a petition form you can use, by writing to the Clerk of the United States Tax Court at 400 Second Street NW, Washington, D.C. 20217. You should do this promptly if you intend to file a petition with the Tax Court.

If you decide not to file a petition with the Tax Court, we would appreciate it if you would sign and return the enclosed waiver form. This will permit us to assess the deficiency quickly and will limit the accumulation of interest. The enclosed envelope is for your convenience. If you decide not to sign and return the statement and you do not timely petition the Tax Court, the law requires us to assess and bill you for the deficiency after 90 days from the above mailing date of this letter (150 days if this letter is addressed to you outside the United States).

If you have any questions about this letter, please write to the person whose name and address are shown above, or you may call that person at the number shown above. If this number is outside your local calling area, there will be a long distance charge to you. If you prefer, you may call the IRS telephone number listed in your local directory. An IRS employee there will be able to help you, but the office at the address shown on this letter is most familiar with your case.

When you send the information we requested or if you write to us with questions about this letter, please provide your telephone number and the most convenient time for us to call if we need additional information. Please attach this letter to any correspondence to help us identify your case. Keep the copy for your records.

Thank you for your cooperation.

0657

Sincerely yours,



By  
BEVERLY A. STOWELL  
DIRECTOR, SERVICE CENTER

Enclosures:  
Copy of this letter  
Waiver  
Envelope

FORM 5564 (Rev. May 1983)	Department of the Treasury Internal Revenue Service <b>NOTICE OF DEFICIENCY - WAIVER</b>	Symbols ATLANTA STOP 62
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Name and Address of Taxpayer(s)

JOHNNY L. POWELL

04/05/1996

109 S.W. 7TH STREET  
 HALLANDALE FL 33009  
 262-57-8754

Kind of Tax	<input type="checkbox"/> Copy to Authorized Representative		
<b>INDIVIDUAL INCOME</b>	<b>DEFICIENCY</b>		
Tax Year Ended December 31, 1992	Increase in Tax	\$3799.00	Penalties
		Code Section	
		6651(a) I.R.C. :	\$450.00
		6653(a) I.R.C. :	
		6654(a) I.R.C. :	\$69.00
		6661(a) I.R.C. :	
		6653(g) I.R.C. :	
		6662(A) I.R.C. :	

I consent to the immediate assessment and collection of the deficiencies (increase in tax and penalties) shown above, plus any interest. Also, I waive the requirement under section 6532 (a) (1) of the Internal Revenue Code that a notice of claim disallowance be sent to me by certified mail for any overpayment shown on the attached report.

I understand that the filing of this waiver is irrevocable and it will begin the 2-year period for filing suit for refund of the claims disallowed as if the notice of disallowance had been sent by certified or registered mail.

Signature By	►	Date
	►	Date
	Title	Date

**Note:** If you consent to the assessment of the deficiencies shown in this waiver, please sign and return this form to limit the interest charge and expedite our bill to you. Your consent will not prevent you from filing a claim for refund (after you have paid the tax) if you later believe you are so entitled; nor prevent us from later determining, if necessary, that you owe additional tax; nor extend the time provided by law for either action.

If you later file a claim and the Service disallows it, you may file suit for refund in a District Court or in the United States Claims Court, but you may not file a petition with the United States Tax Court.

**Who Must Sign:** If you filed jointly, both you and your spouse must sign. Your attorney or agent may sign this waiver provided that action is specifically authorized by a power of attorney which, if not previously filed, must accompany this form.

If this waiver is signed by a person acting in a fiduciary capacity (for example, an executor, administrator, or a trustee), Form 56, Notice Concerning Fiduciary Relationship, should, unless previously filed, accompany this form.

If you agree, please sign and return this form, keep one copy for your records.